

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**



**ADVISORY OPINION NO. 137**

The question is whether a conflict of interest exists between the duties of a senior advisor to a member of the City Council [Council] and his retention of a real estate broker's license.

The duties of a senior advisor to a City councilmember include involvement in every aspect of Council business. A significant portion of Council business relates to land use and zoning issues. For example, the Council has the authority to enact land use legislation, such as zoning, the general plan, and development plans. It also has the authority to issue certificates of appropriateness for the development of land or the construction of land in certain areas. The Council also has the authority to issue shoreline management permits for the development of land situated within established shoreline management areas. It also has the power to affect interests in land being condemned for public use or projects.

Several standards of conduct from the Revised Charter of Honolulu 1973 (1983 Ed.) [RCH] are applicable to this situation.

1. Section 11-102, in pertinent part, provides:

No elected or appointed officer or employee shall:

. . . .

2. Disclose confidential information gained by reason of his office or position or use such information for the personal gain or benefit of anyone.

3. Engage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of his official duties or which may tend to impair his independence of judgment in the performance of his official duties.

Section 11-104, RCH, provides:

No elected or appointed officer or employee shall use his official position to secure or grant special consideration, treatment, advantage, privilege or exemption to himself or any person beyond that which is available to every other person.

In handling various matters relating to land, a senior advisor often has access to confidential information or information which has not yet been made public. Obviously it would be an unfair advantage for one broker to have information regarding land use matters which is not available to other brokers. If the senior advisor came across confidential information which he decided to make use of in his private business as a broker, such an action would violate Sections 11-102.2 and 11-104, RCH, mentioned above.

A senior advisor is frequently called upon to make recommendations on land use matters to his councilmember. If he had an interest as a broker in a parcel of land and he made a recommendation to upgrade that land, which would be profitable for him, such an action on his part would be in violation of Section 11-102.3, RCH. It would be incompatible with the proper discharge of his duties to make a recommendation on a parcel of land in which he had an interest.

These hypothetical examples are only two of many examples which could demonstrate the incompatibility of the position of senior advisor with the use of a broker's license in any transaction in which Council action is pending, required, or anticipated. Reference is made to Advisory Opinion No. 130 for additional hypothetical examples and a thorough discussion of this same issue. The Ethics Commission [Commission] finds that there is a conflict between outside employment as a broker and the position of senior advisor. In order to avoid any conflict of interest, the Commission suggests that the senior advisor's activities as a broker be limited so that he does not engage in any transactions in land or acquire any interest in land in which Council action is pending, required, or anticipated.

Dated: May 25, 1984

GILBERT A. GIMA  
Acting Chair  
Ethics Commission

Note: The Ethics Commission's *Guidelines on Real Estate Licenses*, issued March 21, 1988, supersede Advisory Opinion No. 137.